

Begin forwarded message:

**From:** "Matthew R. Serge" <[MSerge@dwmlaw.com](mailto:MSerge@dwmlaw.com)>  
**Subject: RE: Meena, LLC**  
**Date:** August 2, 2021 at 1:06:26 PM EDT  
**To:** 'Theresa Swanick' <[tswanick@gmail.com](mailto:tswanick@gmail.com)>

Hi, Theresa. Thanks for checking in on this. It is my understanding that at least one ZBA member questioned whether the gasoline station remains a lawful non-conforming use - even though it has not been in operation for a number of years – because the convenience store on the same lot is still operating. Consistent with our telephone conversation, I do not find that the gasoline station use remains a protected, non-conforming use, because the convenience store has stayed in business consistently. A convenience store is separate use from the gasoline station, and the two uses are treated differently in the Town's Zoning Ordinance.

The convenience store is a “retail business” use, and the gasoline station is an “automobile service station”, under the Table of Uses. These two uses are treated differently in the Table of Uses, with the automobile service station requiring a special exception, and the retail business being allowed as a matter of right. In addition, as we know, a gasoline station (aka automobile service station) is expressly prohibited under the groundwater protection overlay district. See Zoning Ordinance, Section 2207 (8).

While I understand the concept of tying two uses that are often associated with one another together for the non-conforming use analysis, this would be counter to the fact the uses are treated differently in the ordinance, and have different impacts. If someone had a convenience store only and now applied to include a gas station, he or she would need the variance to operate that use in the groundwater protection zone. This should not be different for a gas station that ceased operating a number of years back and now wants to resume operations. The policy behind non-conforming uses is to eventually bring them into conformity, so allowing the gas station to resume operations without review would be counter to that policy. Here, the automobile service station use ceased to operate more than 2 years prior and, regardless of the reason for the operation ceasing, that use was abandoned. As a result, the applicant is properly seeking a variance.

Moreover, if I recall correctly, there was also one or more dwelling units on the property as well. This is also a separate and distinct use that cannot be tied to some other ongoing use.

Please let me know if you have any further questions. Thanks.

-Matt